

**Letter of Findings Number: 01-20110076
Individual Income Tax
For Tax Years 2000-09**

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ISSUE

I. Individual Income Tax—Imposition.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-5-4.

Taxpayer protests the imposition of individual income tax as determined by investigation.

STATEMENT OF FACTS

Taxpayer operates a retail store in Indiana as a sole proprietorship, therefore the retail store's income and related tax duties flow through to Taxpayer. As the result of an investigation, the Indiana Department of Revenue ("Department") determined that Taxpayer had not filed individual income tax returns for the tax years 2000 through 2009. The Department conducted its investigation based on the information that Taxpayer provided and determined that Taxpayer owed individual income tax for those years. The Department therefore issued proposed assessments for individual income tax, interest, and ten percent negligence penalties for those years. Taxpayer protests that the Department over-estimated the taxes due for the years at issue. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Individual Income Tax—Imposition.

DISCUSSION

Taxpayer protests that the Department did not properly account for the cost of goods sold ("COGS") in Taxpayer's retail store. Due to the absence of returns and supporting documentation from Taxpayer, the Department based its calculations on figures available from the "Bizstats" database of similarly-situated businesses. Taxpayer believes that, if additional COGS were taken into account, the amount of income from the store would be significantly reduced and that the income which flowed through to Taxpayer as a sole proprietor would be significantly reduced. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

IC § 6-8.1-5-4 provides:

(a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

(b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:

- (1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; or
- (2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular tax liability was due, unless after an audit, the department consents to earlier destruction.

In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.

(c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times.

(d) A person must, on request by the department, furnish a copy of any federal returns that he has filed.

Also, IC § 6-8.1-5-1(b) provides:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

In the protest process, Taxpayer explained that its business required a higher COGS than the types of businesses represented by the Bizstats figures. In support of this position, Taxpayer provided Indiana state income tax returns for the years at issue along with documentation and explanation of how it calculated what its COGS were for the ten years at issue.

After review of the additional documentation and explanation, the Department is unable to agree that these materials meet the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c). While

the materials do show some of Taxpayer's store's COGS, there are insufficient sources to establish the store's overall finances. The COGS numbers are essentially standing alone without a total explanation of the store's income and expenses. These are the materials required by IC § 6-8.1-5-4 to be available. The Department acknowledges Taxpayer's efforts to find materials and explanations but, as previously stated, those efforts do not meet the burden imposed by IC § 6-8.1-5-1(c).

As a secondary issue, Taxpayer states that when he did file state tax returns (after the Department's proposed assessments were issued in the name of both Taxpayer and his wife) the returns were filed in his name alone and that any liabilities should be his alone and not his wife's. The Department notes that Taxpayer's filings after the assessments were issued do not in and of themselves change the assessments or the liabilities associated with those assessments. Therefore, both Taxpayer and his wife remain liable for the proposed assessments at issue.

FINDING

Taxpayer's protest is denied.

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